

EXHIBIT A

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Attorneys for Defendant Salesforce, Inc.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Ivonne Carbajal, individually and on behalf
of all others similarly situated.

Plaintiff,

No. 2:24-cv-01030-DLR

DECLARATION

Lowe's Companies, Inc., a Delaware corporation, and Salesforce, Inc., a Delaware corporation,

Defendants.

I, Dawn Ratcliff, declare as follows:

1. I am the Vice President of Product Management for Salesforce, Inc. (“Salesforce”), I have personal knowledge of the following facts, and I am competent to testify to such matters and facts as necessary.

2. Salesforce is a Delaware corporation, with its headquarters in San Francisco, California.

3. Salesforce is a software company that provides cloud-based customer relationship management (“CRM”) software, and applications focused on sales, customer service, marketing automation, e-commerce, analytics, and application development.

4. Salesforce does not own any real estate in Arizona, and less than 0.5 percent of Salesforce employees work in Arizona.

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1 5. Salesforce does not send emails on behalf of Lowe's Companies, Inc.
2 ("Lowe's") to recipients in Arizona or elsewhere.

3 6. Rather, Salesforce offers subscriptions to a CRM software package called
4 Salesforce Marketing Cloud ("Marketing Cloud"), previously known as ExactTarget
5 Services.

6 7. Lowe's subscribes to Marketing Cloud pursuant to the terms of a Master
7 Subscription Agreement, effective August 2, 2016, and as periodically amended (the
8 "MSA").

9 8. Under the MSA, Salesforce makes Marketing Cloud available to Lowe's
10 and provides support services.

11 9. Subscribers like Lowe's access Marketing Cloud through an online portal,
12 through which subscribers build and send marketing emails.

13 10. Under the MSA, Lowe's may use the software to build its own emails,
14 upload its own recipient lists, and initiate its own emails from the online portal.

15 11. While Salesforce offers its subscribers like Lowe's services such as
16 customer support and email template design, Salesforce does not control email content or
17 email recipients, nor does Salesforce send any emails on behalf of its subscribers.

18 12. The Marketing Cloud software offers an open tracking function, which
19 allows subscribers like Lowe's to insert a tracking pixel (also known as an "open pixel")
20 into the emails subscribers create and send.

21 13. Subscribers like Lowe's decide whether to use tracking pixel technology in
22 the emails they create and send.

23 14. Subscribers like Lowe's may also integrate third-party products into the
24 Marketing Cloud platform, including tracking cookies or other tracking technologies
25 offered by third parties.

26 15. Paragraph 3.3 of the MSA requires that "[Lowe's] will... (d) use
27 Services...only in accordance with...applicable laws and government regulations."

1 16. Salesforce advises that subscribers are solely responsible (i) for assessing
2 whether tracking technologies can be used in compliance with applicable legal
3 requirements, and (ii) for providing notice and/or obtaining consent, as may be required
4 by law, for use of tracking technologies.

5 17. Salesforce disclaims any liability to subscribers or any third parties arising
6 from subscribers' use of tracking technologies in the emails subscribers send through
7 Marketing Cloud.

8 18. When subscribers like Lowe's use the tracking pixel functionality, any data
9 obtained through the tracking pixel is sent to a private cloud database, where the
10 subscriber may access or export that data.

11 19. Marketing Cloud has a functionality that allows subscribers like Lowe's to
12 export its tracking extracts (*i.e.*, sends, clicks, opens, bounces, unsubscribes, and spam
13 complaints) to its own File Transfer Protocol (FTP) servers, as the subscriber chooses.

14 20. Salesforce is merely the "send engine" for emails Lowe's creates and sends,
15 unless specifically contracted to assist on a particular email marketing campaign under a
16 statement of work ("SOW"), for which Salesforce acts as an independent contractor.

17 21. Salesforce did not provide email campaign services to Lowe's during the
18 2023-2024 contract term.

19 22. Regardless of whether Salesforce provided services to Lowe's under a
20 SOW, Lowe's maintains complete control over its recipient lists, including capturing
21 recipient consent to receive emails, the content of emails (including the use of tracking
22 pixels), the sending of emails, and acting on requests from recipients to remove them from
23 future emails, for example.

24 23. Lowe's emails and recipient lists are "Customer Data" under the terms of
25 the MSA, which Salesforce is prohibited from accessing except to provide services to
26 Lowe's, as compelled by law enforcement, or as expressly permitted in writing by
27 Lowe's.

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1 I declare under penalty of perjury that the foregoing is true and correct.
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3 Executed on 7/17/2024.

4 DocuSigned by:

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6 Dawn Ratcliff
7 B1525B45C67A448A
8 Dawn Ratcliff

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